

## §§ 26.309–26.320

associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see subparts C and D as appropriate).

### §§ 26.309–26.320 [Reserved]

#### § 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume “harmful electrical interference” to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in subpart F of this part and in part 1, subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

#### § 26.322 [Reserved]

#### § 26.323 Post-action divestitures.

Any parties sharing a common non-controlling ownership interests who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit electronically via the ULS, a signed statement with its long-form application (FCC Form 601) stating that sufficient properties will be divested within ninety days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications

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subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant of the license.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it deems appropriate. Divestiture may be an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68954, Dec. 14, 1998]

### §§ 26.324–26.326 [Reserved]

## PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

SOURCE: 62 FR 9658, Mar. 3, 1997, unless otherwise noted.

## Subpart A—General Information

### § 27.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis*. The rules for miscellaneous wireless communications services (WCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose*. This part states the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the following bands.

(1) 2305–2320 MHz and 2345–2360 MHz.

(2) 746–764 MHz and 776–794 MHz.

(c) *Scope*. The rules in this part apply only to stations authorized under this part.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 3144, Jan. 20, 2000; 65 FR 17601, Apr. 4, 2000]

### § 27.2 Permissible communications.

(a) *Miscellaneous wireless communications services*. Except as provided in paragraph (b) of this section and subject to technical and other rules contained in this part, a licensee in the frequency bands specified in § 27.5 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in § 2.106 of this chapter (column 5).

(b) *746–747 MHz, 776–777 MHz, 762–764 MHz and 792–794 MHz bands*. Operators in the 746–747 MHz, 776–777 MHz, 762–764 MHz and 792–794 MHz bands may not employ a cellular system architecture. A cellular system architecture is defined, for purposes of this part, as one

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that consists of many small areas or cells (segmented from a larger geographic service area), each of which uses its own base station, to enable frequencies to be reused at relatively short distances.

(c) *Satellite DARS*. Satellite digital audio radio service (DARS) may be provided using the 2310–2320 and 2345–2360 MHz bands. Satellite DARS service shall be provided in a manner consistent with part 25 of this chapter.

[65 FR 3144, Jan. 20, 2000, as amended at 65 FR 17601, Apr. 4, 2000]

#### § 27.3 Other applicable rule parts.

Other FCC rule parts applicable to the Wireless Communications Service include the following:

(a) *Part 0*. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1*. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

(c) *Part 2*. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5*. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 15*. This part sets forth the requirements and conditions applicable to certain radio frequency devices.

(f) *Part 17*. This part contains requirements for construction, marking and lighting of antenna towers.

(g) *Part 20*. This part sets forth the requirements and conditions applicable to commercial mobile radio service providers.

(h) *Part 21*. This part sets forth rules the requirements and conditions applicable to point-to-point microwave services relating to communications common carriers.

(i) *Part 22*. This part sets forth the requirements and conditions applicable to public mobile services.

(j) *Part 24*. This part sets forth the requirements and conditions applicable to personal communications services.

(k) *Part 25*. This part contains the requirements for satellite communications, including satellite DARS.

(l) *Part 51*. This part contains general duties of telecommunications carriers to provide for interconnection with other telecommunications carriers.

(m) *Part 68*. This part contains technical standards for connection of terminal equipment to the telephone network.

(n) *Part 101*. This part sets forth the requirements and conditions applicable to fixed microwave services.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998; 65 FR 3144, Jan. 20, 2000]

#### § 27.4 Terms and definitions.

*Affiliate*. This term shall have the same meaning as that for “affiliate” in part 1, § 1.2110(b)(4) of this chapter.

*Assigned frequency*. The center of the frequency band assigned to a station.

*Authorized bandwidth*. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

*Average terrain*. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

*Base station*. A land station in the land mobile service.

*Broadcast services*. This term shall have the same meaning as that for “broadcasting” in section 3(6) of the Communications Act of 1934, *i.e.*, “the dissemination of radio communications intended to be received by the public,

directly or by the intermediary of relay stations.” 47 U.S.C. 153(6).

*Effective Radiated Power (ERP)* (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

*Equivalent Isotropically Radiated Power (EIRP)*. The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

*Fixed service*. A radio communication service between specified fixed points.

*Fixed station*. A station in the fixed service.

*Guard band manager*. The term *Guard band manager* refers to a commercial licensee in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Guard band manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

*Land mobile service*. A mobile service between base stations and land mobile stations, or between land mobile stations.

*Land mobile station*. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

*Land station*. A station in the mobile service not intended to be used while in motion.

*Mobile service*. A radio communication service between mobile and land stations, or between mobile stations.

*Mobile station*. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

*National Geodetic Reference System (NGRS)*. The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

*Portable device*. Transmitters designed to be used within 20 centimeters of the body of the user.

*Radiodetermination*. The determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.

*Radiolocation*. Radiodetermination used for purposes other than those of radionavigation.

*Radiolocation land station*. A station in the radiolocation service not intended to be used while in motion.

*Radiolocation mobile station*. A station intended to be used while in motion or during halts at unspecified points.

*Radionavigation*. Radiodetermination used for the purpose of navigation, including obstruction warning.

*Satellite Digital Audio Radio Service (satellite DARS)*. A radiocommunication service in which compact disc quality programming is digitally transmitted by one or more space stations.

*Time division multiple access (TDMA)*. A multiple access technique whereby users share a transmission medium by being assigned and using (one-at-a-time) for a limited number of time division multiplexed channels; implies that several transmitters use one channel for sending several bit streams.

*Time division multiplexing (TDM)*. A multiplexing technique whereby two or more channels are derived from a transmission medium by dividing access to the medium into sequential intervals. Each channel has access to the entire bandwidth of the medium during its interval. This implies that one transmitter uses one channel to send several bit streams of information.

*Universal Licensing System*. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

*Wireless communications service*. A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5.

[62 FR 9658, Mar. 3, 1997, as amended at 62 FR 16497, Apr. 7, 1997; 63 FR 68954, Dec. 14, 1998; 65 FR 3145, Jan. 20, 2000; 65 FR 17602, Apr. 4, 2000]

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### § 27.5 Frequencies.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* The following frequencies are available for WCS in the 2305–2320 MHz and 2345–2360 MHz bands:

(1) Two paired channel blocks are available for assignment on a Major Economic Area basis as follows:

Block A: 2305–2310 and 2350–2355 MHz; and  
Block B: 2310–2315 and 2355–2360 MHz.

(2) Two unpaired channel blocks are available for assignment on a Regional Economic Area Grouping basis as follows:

Block C: 2315–2320 MHz; and  
Block D: 2345–2350 MHz.

(b) *746–764 MHz and 776–794 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 746–764 MHz and 776–794 MHz bands:

(1) Two paired channels of 1 megahertz each are available for assignment solely to Guard band managers. Block A: 746–747 MHz and 776–777 MHz.

(2) Two paired channels of 2 megahertz each are available for assignment solely to Guard band managers. Block B: 762–764 MHz and 792–794 MHz.

(3) Two paired channels of 5 megahertz each are available for assignment. Block C: 747–752 MHz and 777–782 MHz.

(4) Two paired channels of 10 megahertz each are available for assignment. Block D: 752–762 MHz and 782–792 MHz.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 3145, Jan. 20, 2000; 65 FR 17602, Apr. 4, 2000]

### § 27.6 Service areas.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* WCS service areas for the 2305–2320 MHz and 2345–2360 MHz bands are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined below. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the FEDERAL REGISTER Notice that established the 172 EAs are available for public inspection and copying at the FCC Public Reference Room, Room CY-A257, 445 12th Street SW, Washington, D.C. 20554.

(1) The 52 MEAs are composed of one or more EAs and the 12 REAGs are composed of one or more MEAs, as defined in the table below:

REAGs	MEAs	EAs
1 (Northeast) .....	1 (Boston) .....	1–3.
	2 (New York City) .....	4–7, 10.
	3 (Buffalo) .....	8.
	4 (Philadelphia) .....	11–12.
2 (Southeast) .....	5 (Washington) .....	13–14.
	6 (Richmond) .....	15–17, 20.
	7 (Charlotte-Greensboro-Greenville-Raleigh) .....	18–19, 21–26, 41–42, 46.
	8 (Atlanta) .....	27–28, 37–40, 43.
	9 (Jacksonville) .....	29, 35.
	10 (Tampa-St. Petersburg-Orlando) .....	30, 33–34.
	11 (Miami) .....	31–32.
3 (Great Lakes) .....	12 (Pittsburgh) .....	9, 52–53.
	13 (Cincinnati-Dayton) .....	48–50.
	14 (Columbus) .....	51.
	15 (Cleveland) .....	54–55.
	16 (Detroit) .....	56–58, 61–62.
	17 (Milwaukee) .....	59–60, 63, 104–105, 108.
	18 (Chicago) .....	64–66, 68, 97, 101.
	19 (Indianapolis) .....	67.
	20 (Minneapolis-St. Paul) .....	106–107, 109–114, 116.
	21 (Des Moines-Quad Cities) .....	100, 102–103, 117.
4 (Mississippi Valley) .....	22 (Knoxville) .....	44–45.
	23 (Louisville-Lexington-Evansville) .....	47, 69–70, 72.
	24 (Birmingham) .....	36, 74, 78–79.
	25 (Nashville) .....	71.
	26 (Memphis-Jackson) .....	73, 75–77.
	27 (New Orleans-Baton Rouge) .....	80–85.

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REAGs	MEAs	EAs
5 (Central)	28 (Little Rock) ..... 29 (Kansas City) ..... 30 (St. Louis) ..... 31 (Houston) ..... 32 (Dallas-Fort Worth) ..... 33 (Denver) ..... 34 (Omaha) ..... 35 (Wichita) ..... 36 (Tulsa) ..... 37 (Oklahoma City) ..... 38 (San Antonio) ..... 39 (El Paso-Albuquerque) ..... 40 (Phoenix) .....	90–92, 95. 93, 99, 123. 94, 96, 98. 86–87, 131. 88–89, 127–130, 135, 137–138. 115, 140–143. 118–121. 122. 124. 125–126. 132–134. 136, 139, 155–157. 154, 158–159. 144–147, 168. 148–150, 152. 151, 162–165. 153, 160–161. 166–167. 169–170. 171. 172. 173.
6 (West)	41 (Spokane-Billings) ..... 42 (Salt Lake City) ..... 43 (San Francisco-Oakland-San Jose) ... 44 (Los Angeles-San Diego) ..... 45 (Portland) ..... 46 (Seattle) ..... 47 (Alaska) ..... 48 (Hawaii) ..... 49 (Guam and the Northern Mariana Is-lands).	174. 175. 176.
7 (Alaska)	50 (Puerto Rico and U.S. Virgin Islands) ..	174.
8 (Hawaii)	51 (American Samoa) .....	175.
9 (Guam and the Northern Mariana Is-lands).	52 (Gulf of Mexico) .....	176.
10 (Puerto Rico and U.S. Virgin Islands) ..		
11 (American Samoa) .....		
12 (Gulf of Mexico) .....		

(2) The Gulf of Mexico EA extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

(b) 746–764 MHz and 776–794 MHz bands. WCS service areas for the 746–764 MHz and 776–794 MHz bands are as follows.

(1) Service areas for Block A in the 746–747 and 776–777 MHz bands and Block B in the 762–764 and 792–794 MHz bands are based on Major Economic Areas (MEAs), as defined in paragraphs (a)(1) and (a)(2) of this section.

(2) Service areas for Blocks C and D in the 747–762 MHz and 777–792 MHz bands are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission.

See 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. See also paragraphs (a)(1) and (a)(2) of this section and 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the FEDERAL REGISTER Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Reference Center, Room CY A-257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at [www.fcc.gov/oet/info/maps/areas/](http://www.fcc.gov/oet/info/maps/areas/).

(i) There are 6 EAGs, which are composed of multiple EAs as defined in the table below:

Economic area groupings	Name	Economic areas
EAG001 .....	Northeast .....	1–11, 54
EAG002 .....	Mid-Atlantic .....	12–26, 41, 42, 44–53, 70
EAG003 .....	Southeast .....	27–40, 43, 69, 71–86, 88–90, 95, 96, 174, 176(part)
EAG004 .....	Great Lakes .....	55–68, 97, 100–109
EAG005 .....	Central/Mountain .....	87, 91–94, 98, 99, 110–146, 148, 149, 152, 154–159, 176(part)
EAG006 .....	Pacific .....	147, 150, 151, 153, 160–173, 175

NOTE 1 TO PARAGRAPH (b)(2)(i): Economic Area Groupings are defined by the Federal Communications Commission; see 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico.

NOTE 2 TO PARAGRAPH (b)(2)(i): Economic Areas are defined by the Regional Economic

Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce February 1995 and extended by the Federal Communications Commission, see 62 FR 9636 (March 3, 1997).

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(ii) For purposes of paragraph (b)(2)(i) of this section, EA 176 (the Gulf of Mexico) will be divided between EAG003 (the Southeast EAG) and EAG005 (the Central/Mountain EAG) in accordance with the configuration of the Eastern/Central and Western Planning Area established by the Mineral Management Services Bureau of the Department of the Interior (MMS). That portion of EA 176 contained in the Eastern and Central Planning Areas as defined by MMS will be included in EAG003; that portion of EA 176 contained in the Western Planning Area as defined by MMS will be included in EAG005. Maps of these areas may be found on the following MMS website: [www.gomr.mms.gov/homepg/offshore/offshore.html](http://www.gomr.mms.gov/homepg/offshore/offshore.html).

[62 FR 9658, Mar. 3, 1997, as amended at 64 FR 60726, Nov. 8, 1999; 65 FR 3145, Jan. 20, 2000; 65 FR 17602, Apr. 4, 2000; 65 FR 60113, Oct. 10, 2000]

### Subpart B—Applications and Licenses

#### § 27.10 Regulatory status.

Except with respect to Guard band manager licenses, which are subject to subpart G of this part, the following rules apply concerning the regulatory status of licensees in the frequency bands specified in § 27.5.

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, and broadcast. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

(b) *Designation of regulatory status in initial application.* An applicant shall specify in its initial application if it is requesting authorization to provide common carrier, non-common carrier, or broadcast services, or a combination thereof.

(c) *Amendment of pending applications.* The following rules apply to amendments of a pending application.

(1) Any pending application may be amended to:

(i) Change the carrier regulatory status requested, or

(ii) Add to the pending request in order to obtain common carrier, non-common carrier, or broadcast status, or a combination thereof, in a single license.

(2) Amendments to change, or add to, the carrier regulatory status in a pending application are minor amendments filed under § 1.927 of this chapter.

(d) *Modification of license.* The following rules apply to amendments of a license.

(1) A licensee may modify a license to:

(i) Change the regulatory status authorized, or

(ii) Add to the status authorized in order to obtain a combination of services of different regulatory status in a single license.

(2) Applications to change, or add to, the carrier status in a license are modifications not requiring prior Commission authorization. The licensee must notify the Commission within 30 days of the change. If the change results in the discontinuance, reduction, or impairment of an existing service, the licensee is subject to the provisions of § 27.66.

[65 FR 3146, Jan. 20, 2000, as amended at 65 FR 17602, Apr. 4, 2000]

#### § 27.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 27.5. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with §§ 1.1301 through 1.1319 of this chapter.

(b) *2305–2320 MHz and 2345–2360 MHz bands.* Initial authorizations for the 2305–2320 MHz and 2345–2360 MHz bands shall be for 10 megahertz of spectrum in accordance with § 27.5(a).

(1) Authorizations for Blocks A and B will be based on Major Economic Areas (MEAs), as specified in § 27.6(a)(1).

(2) Authorizations for Blocks C and D will be based on Regional Economic

Area Groupings (REAGs), as specified in § 27.6(a)(2).

(c) *746–764 MHz and 776–794 MHz bands.* Initial authorizations for the 746–764 MHz and 776–794 MHz blocks shall be for 1, 2, 5, or 10 megahertz of spectrum in accordance with § 27.5(b).

(1) Authorizations for Block A, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1).

(2) Authorizations for Block B, consisting of two paired channels of 2 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on Economic Area Groupings (EAGs), as specified in § 27.6(b)(2).

(4) Authorizations for Block D, consisting of two paired channels of 10 megahertz each, will be based on EAGs, as specified in § 27.6(b)(2).

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998; 65 FR 3146, Jan. 20, 2000]

#### § 27.12 Eligibility.

Except as provided in § 27.604 any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

[65 FR 17602, Apr. 4, 2000]

#### § 27.13 License period.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* Initial WCS authorizations for the 2305–2320 MHz and 2345–2360 MHz bands will have a term not to exceed ten years from the date of original issuance or renewal.

(b) *746–764 MHz and 776–794 MHz bands.* Initial authorizations for the 746–764 MHz and 776–794 MHz bands, will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services, will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.

[65 FR 3146, Jan. 20, 2000; 65 FR 12483, Mar. 9, 2000, as amended at 65 FR 17602, Apr. 4, 2000; 65 FR 57267, Sept. 21, 2000]

#### § 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(a) WCS licensees must make a showing of “substantial service” in their license area within the prescribed license term set forth in § 27.13. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(b) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided “substantial” service during its past license term; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(c) In order to establish its right to a renewal expectancy, a WCS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its WCS system; and

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(d) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit



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will not be allowed if the modification application is dismissed or denied.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 3146, Jan. 20, 2000]

### § 27.15 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948.

(2) WCS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(b) *Technical Standards*—(1) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to section 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(4) *Signal levels.* For purposes of partitioning and disaggregation, part 27 systems must be designed so as not to exceed the signal level specified for the particular spectrum block in § 27.55 at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

(c) *Unjust Enrichment*—(1) *Bidding credits.* Licensees that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in section 27.209(c).

(2) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the

population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 27.13.

(e) *Compliance with construction requirements.* The following rules apply for purposes of implementing the construction requirements set forth in § 27.14.

(1) *Partitioning.* Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

(2) *Disaggregation.* Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will

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meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998; 65 FR 3146, Jan. 20, 2000; 65 FR 57268, Sept. 21, 2000]

### Subpart C—Technical Standards

#### § 27.50 Power and antenna height limits.

(a) The following power limits apply to the 2305–2320 MHz and 2345–2360 MHz bands:

(1) Fixed, land, and radiolocation land stations transmitting are limited to 2000 watts peak equivalent isotropically radiated power (EIRP).

(2) Mobile and radiolocation mobile stations transmitting are limited to 20 watts EIRP peak power.

(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band and the 777–792 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Control stations and mobile stations transmitting in the 747–762 MHz band and the 776–794 MHz band and fixed stations transmitting in the 776–777 MHz band and the 792–794 MHz band are limited to 30 watts ERP;

(3) Portable stations (hand-held devices) transmitting in the 747–762 MHz band and the 776–794 MHz band are limited to 3 watts ERP;

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times,

limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(c) Peak transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

TABLE 1—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 746–764 MHz AND 777–792 MHz BANDS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500) .....	65
Above 1220 (4000) To 1372 (4500) .....	70
Above 1067 (3500) To 1220 (4000) .....	75
Above 915 (3000) To 1067 (4000) .....	100
Above 763 (2500) To 915 (3000) .....	140
Above 610 (2000) To 763 (2500) .....	200
Above 458 (1500) To 610 (2000) .....	350
Above 305 (1000) To 458 (1500) .....	600
Up to 305 (1000) .....	1000

[62 FR 16497, Apr. 7, 1997, as amended at 65 FR 3147, Jan. 20, 2000; 65 FR 17602, Apr. 4, 2000; 65 FR 42882, July 12, 2000; 65 FR 57267, Sept. 21, 2000]

#### § 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part must be of a type that has been authorized by the Commission under its certification procedure.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

[65 FR 3147, Jan. 20, 2000]

**§ 27.52 RF safety.**

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in sections 1.1307(b), 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

**§ 27.53 Emission limits.**

(a) For operations in the bands 2305–2320 MHz and 2345–2360 MHz, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by the following amounts:

(1) *For fixed, land, and radiolocation land stations:* By a factor not less than  $80 + 10 \log (p)$  dB on all frequencies between 2320 and 2345 MHz;

(2) *For mobile and radiolocation mobile stations:* By a factor not less than  $110 + 10 \log (p)$  dB on all frequencies between 2320 and 2345 MHz;

(3) *For fixed, land, mobile, radiolocation land and radiolocation mobile stations:* By a factor not less than  $70 + 10 \log (p)$  dB on all frequencies below 2300 MHz and on all frequencies above 2370 MHz; and not less than  $43 + 10 \log (p)$  dB on all frequencies between 2300 and 2320 MHz and on all frequencies between 2345 and 2370 MHz that are outside the licensed bands of operation;

(4) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or less, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth;

(5) In complying with the requirements in § 27.53(a)(1) and § 27.53(a)(2), WCS equipment that uses opposite sense circular polarization from that used by Satellite DARS systems in the 2320–2345 MHz band shall be permitted an allowance of 10 dB;

(6) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the edges, both upper and lower, of the licensee's bands of operation as the design permits;

(7) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power;

(8) Waiver requests of any of the out-of-band emission limits in paragraphs (a)(1) through (a)(7) of this section shall be entertained only if interference protection equivalent to that afforded by the limits is shown;

(9) In the 2305–2315 MHz band, if portable devices comply with all of the following requirements, then paragraph (a)(2) of this section shall not apply to portable devices, which instead shall attenuate all emissions into the 2320–2345 MHz band by a factor of not less than  $93 + 10 \log (p)$  dB:

(i) The portable device has a duty cycle of 12.5% or less, with at most a 312.5 microsecond pulse every 2.5 milliseconds;

(ii) The portable device must employ time division multiple access (TDMA) technology;

(iii) The nominal peak transmit output power of the portable device is no more than 200 milliwatts (25 milliwatts average power);

(iv) The portable device operates with the minimum power necessary for successful communications;

(v) The nominal average base station transmit output power is no more than 800 milliwatts when the base station antennas is located at a height of at least 8 meters (26.25 feet) above the ground;

(vi) Only fixed and portable devices and services may be provided; vehicle-mounted units are not permitted; and

(vii) Transmitting antennas shall employ linear polarization or another polarization that provides equivalent of better discrimination with respect to a DARS antenna;

(10) The out-of-band emissions limits in paragraphs (a)(1) through (a)(9) of this section may be modified by the private contractual agreement of all affected licensees, who shall maintain a copy of the agreement in their station files and disclose it to prospective

assignees or transferees and, upon request, to the Commission.

(b) *For WCS Satellite DARS operations:* The limits set forth in § 25.202(f) of this chapter shall apply, except that Satellite DARS operations shall be limited to a maximum power flux density of  $-197 \text{ dBW/m}^2/4 \text{ kHz}$  in the 2370–2390 MHz band at Arecibo, Puerto Rico.

(c) For operations in the 747 to 762 MHz band and the 777 to 792 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 747 to 762 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least  $43 + 10 \log (P) \text{ dB}$ ;

(2) On any frequency outside the 777 to 792 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least  $43 + 10 \log (P) \text{ dB}$ ;

(3) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than  $76 + 10 \log (P) \text{ dB}$  in a 6.25 kHz band segment, for base and fixed stations;

(4) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than  $65 + 10 \log (P) \text{ dB}$  in a 6.25 kHz band segment, for mobile and portable stations;

(5) Compliance with the provisions of paragraphs (c)(1) and (c)(2) of this sec-

tion is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed;

(6) Compliance with the provisions of paragraphs (c)(3) and (c)(4) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment.

(d) For operations in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands, transmitters must meet the following emission limitations:

(1) The adjacent channel coupled power (ACCP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a maximum value for the ACCP relative to maximum output power as a function of the displacement from the channel center frequency. In addition, the ACCP for a mobile station transmitter at the specified frequency displacement must not exceed the value shown in the tables. For transmitters that have power control, the latter ACCP requirement can be met at maximum power reduction. In the following charts, “(s)” means that a swept measurement is to be used.

6.25 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
6.25 .....	6.25	–40	not specified
12.50 .....	6.25	–60	–45
18.75 .....	6.25	–60	–45
25.00 .....	6.25	–65	–50
37.50 .....	25.00	–65	–50
62.50 .....	25.00	–65	–50
87.50 .....	25.00	–65	–50
150.00 .....	100.00	–65	–50
250.00 .....	100.00	–65	–50
>400 to receive band .....	30(s)	–75	–55
In the receive band .....	30(s)	–100	–70

## 12.5 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
9.375 .....	6.25	–40	not specified
15.625 .....	6.25	–60	–45
21.875 .....	6.25	–60	–45
37.500 .....	25.00	–65	–50
62.500 .....	25.00	–65	–50
87.500 .....	25.00	–65	–50
150.000 .....	100.00	–65	–50
250.000 .....	100.00	–65	–50
>400 to receive band .....	30(s)	–75	–55
In the receive band .....	30(s)	–100	–70

## 25 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
15.625 .....	6.25	–40	not specified
21.875 .....	6.25	–60	–45
37.500 .....	25.00	–65	–50
62.500 .....	25.00	–65	–50
87.500 .....	25.00	–65	–50
150.000 .....	100.00	–65	–50
250.000 .....	100.00	–65	–50
>400 to receive band .....	30(s)	–75	–55
In the receive band .....	30(s)	–100	–70

## 150 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS 12.5 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
100 .....	50	–40	not specified
200 .....	50	–50	–35
300 .....	50	–50	–35
400 .....	50	–50	–35
600 to 1000 .....	30(s)	–60	–45
1000 to receive band .....	30(s)	–70	–55
In the receive band .....	30(s)	–100	–75

## 6.25 KHz BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
6.25 .....	6.25	–40
12.50 .....	6.25	–60
18.75 .....	6.25	–60
25.00 .....	6.25	–65
37.50 .....	25.00	–65
62.50 .....	25.00	–65
87.50 .....	25.00	–65
150.00 .....	100.00	–65
250.00 .....	100.00	–65
>400 to receive band .....	30(s)	–80 (continues @ –6dB/oct)
In the receive band .....	30(s)	–100

## 12.5 KHz BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
9.375 .....	6.25	–40

## 12.5 KHz BASE TRANSMITTER ACCP REQUIREMENTS—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
15.625 .....	6.25	−60
21.875 .....	6.25	−60
37.500 .....	25.00	−60
62.500 .....	25.00	−65
87.500 .....	25.00	−65
150.000 .....	100.00	−65
250.000 .....	100.00	−65
>400 to receive band .....	30(s)	−80 (continues @ −6dB/oct)
In the receive band .....	30(s)	−100

## 25 KHz BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
15.625 .....	6.25	−40
21.875 .....	6.25	−60
37.500 .....	25.00	−60
62.500 .....	25.00	−65
87.500 .....	25.00	−65
150.000 .....	100.00	−65
250.000 .....	100.00	−65
>400 to receive band .....	30(s)	−80 (continues @ −6dB/oct)
In the receive band .....	30(s)	−100

## 150 KHz BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
100 .....	50	−40
200 .....	50	−50
300 .....	50	−55
400 .....	50	−60
600 to 1000 .....	30(s)	−65
1000 to receive band .....	30(s)	−75 (continues @ −6dB/oct)
In the receive band .....	30(s)	−100

(2) *ACCP measurement procedure.* The following procedures are to be followed for making ACCP transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is on. All measurements must be made at the input to the transmitter's antenna. Measurement bandwidth used below implies an instrument that measures the power in many narrow bandwidths (e.g. 300 Hz) and integrates these powers across a larger band to determine power in the measurement bandwidth.

(i) *Setting reference level.* Using a spectrum analyzer capable of ACCP meas-

urements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the spectrum analyzer to give the power level in the measurement bandwidth. Record this power level in dBm as the "reference power level".

(ii) *Measuring the power level at frequency offsets <600kHz:* Using a spectrum analyzer capable of ACCP measurements, set the measurement bandwidth as shown in the tables above.

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Measure the ACCP in dBm. These measurements should be made at maximum power. Calculate the coupled power by subtracting the measurements made in this step from the reference power measured in the previous step. The absolute ACCP values must be less than the values given in the table for each condition above.

(iii) *Measuring the power level at frequency offsets >600kHz:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and sample mode detection. Sweep  $\pm 6$  MHz from the carrier frequency. Set the reference level to the RMS value of the transmitter power and note the absolute power. The response at frequencies greater than 600 kHz must be less than the values in the tables above.

(iv) *Upper Power Limit Measurement:* The absolute coupled power in dBm measured above must be compared to the table entry for each given frequency offset. For those mobile stations with power control, these measurements should be repeated with power control at maximum power reduction. The absolute ACCP at maximum power reduction must be less than the values in the tables above.

(3) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACCP tables in this section, the power of any emission must be reduced below the unmodulated carrier power (P) by at least  $43 + 10 \log (P)$  dB.

(4) *Authorized bandwidth.* Provided that the ACCP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

(e) For operations in the 746–764 MHz and 776–794 MHz bands, emissions in the band 1559–1610 MHz shall be limited to –70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and –80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(f) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at

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its discretion, require greater attenuation than specified in this section.

[62 FR 16497, Apr. 7, 1997, as amended at 65 FR 3147, Jan. 20, 2000; 65 FR 17602, Apr. 4, 2000; 65 FR 42883, July 12, 2000]

### § 27.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emissions stay within the authorized bands of operation.

### § 27.55 Field strength limits.

The predicted or measured median field strength at any location on the geographical border of a part 27 service area shall not exceed the value specified for the following bands, unless the adjacent affected service area licensees agree to a different field strength. This value applies to both the initially offered service areas and to partitioned, service areas.

(a) 2305–2320 and 2345–2360 MHz bands: 47 dBuV/m.

(b) 746–764 and 776–794 MHz bands: 40dBu V/m

[65 FR 3148, Jan. 20, 2000, as amended by 65 FR 17605, Apr. 4, 2000]

### § 27.56 Antenna structures; air navigation safety.

A licensee that owns its antenna structure(s) must not allow such antenna structure(s) to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, the FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of part 17 of this chapter. See § 17.6 of this chapter.

(a) *Marking and lighting.* Antenna structures must be marked, lighted and maintained in accordance with part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration. For any construction or alteration that would exceed the requirements of section 17.7 of this

chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, 1270 Fairfield Road, Gettysburg, PA 17325.

(b) *Maintenance contracts.* Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

#### § 27.57 International coordination.

WCS operations in the border areas shall be subject to coordination with those countries and provide protection to non-U.S. operations in the 2305-2320 and 2345-2360 MHz bands as appropriate. In addition, satellite DARS operations in WCS spectrum shall be subject to international satellite coordination procedures.

#### § 27.58 Interference to MDS/ITFS receivers.

(a) WCS licensees shall bear full financial obligation to remedy interference to MDS/ITFS block downconverters if all of the following conditions are met:

(1) The complaint is received by the WCS licensee prior to February 20, 2002;

(2) The MDS/ITFS downconverter was installed prior to August 20, 1998;

(3) The WCS fixed or land station transmits at 50 or more watts peak EIRP;

(4) The MDS/ITFS downconverter is located within a WCS transmitter's free space power flux density contour of  $-34$  dBW/m<sup>2</sup>; and

(5) The MDS/ITFS customer or licensee has informed the WCS licensee of the interference within one year from the initial operation of the WCS transmitter or within one year from

any subsequent power increases at the WCS station.

(b) Resolution of the complaint shall be at no cost to the complainant.

(c) Two or more WCS licensees collocating their antennas on the same tower shall assume shared responsibility for remedying interference complaints within the area determined by paragraph (a)(4) of this section unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(d) If the WCS licensee cannot otherwise eliminate interference caused to MDS/ITFS reception, then that licensee must cease operations from the offending WCS facility.

(e) At least 30 days prior to commencing operations from any new WCS transmission site or with increased power from any existing WCS transmission site, a WCS licensee shall notify all MDS/ITFS licensees in or through whose licensed service area they intend to operate of the technical parameters of the WCS transmission facility. WCS and MDS/ITFS licensees are expected to coordinate voluntarily and in good faith to avoid interference problems and to allow the greatest operational flexibility in each other's operations.

[62 FR 16498, Apr. 7, 1997]

#### § 27.59 [Reserved]

#### § 27.60 TV/DTV interference protection criteria.

Base, fixed, control, and mobile transmitters in the 746-764 MHz and 776-794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 59 through 68.

(a) *D/U ratios.* Licensees must choose site locations that are a sufficient distance from co-channel and adjacent channel TV and DTV stations, and/or must use reduced transmitting power or transmitting antenna height such that the following minimum desired signal-to-undesired signal ratios (D/U ratios) are met.



(1) The minimum D/U ratio for co-channel stations is 40 dB at the hypothetical Grade B contour (64 dBµV/m) (88.5 kilometers (55 miles)) of the TV station or 17 dB at the equivalent Grade B contour (41 dBµV/m) (88.5 kilometers (55 miles)) of the DTV station.

(2) The minimum D/U ratio for adjacent channel stations is 0 dB at the hypothetical Grade B contour (64 dBµV/m) (88.5 kilometers (55 miles)) of the TV station or –23 dB at the equivalent Grade B contour (41 dBµV/m) (88.5 kilometers (55 miles)) of the DTV station.

(b) *TV stations and calculation of contours.* The methods used to calculate TV contours and antenna heights above average terrain are given in

§§ 73.683 and 73.684 of this chapter. Tables to determine the necessary minimum distance from the 746–764 MHz or 776–794 MHz station to the TV/DTV station, assuming that the TV/DTV station has a hypothetical or equivalent Grade B contour of 88.5 kilometers (55 miles), are located in § 90.309 of this chapter and labeled as Tables B, D, and E. Values between those given in the tables may be determined by linear interpolation. The locations of existing and proposed TV/DTV stations during the period of transition from analog to digital TV service are given in Part 73 of this chapter and in the final proceedings of MM Docket No. 87–268.

State	City	NTSC TV Ch.	DTV Ch.	ERP (kW)	HAAT (m.)
California .....	Concord .....	42	63	61	856
California .....	Long Beach .....	18	61	413.6	725
California .....	Los Angeles .....	2	60	865.9	1107
California .....	Los Angeles .....	11	65	688.7	896
California .....	Los Angeles .....	13	66	679.7	899
California .....	Riverside .....	62	68	180.1	723
California .....	Sacramento .....	10	61	1000	595
California .....	Stockton .....	64	62	63.5	874
New Jersey .....	Newark .....	13	61	198.7	500
New Jersey .....	Vineland .....	65	66	107.8	280
Pennsylvania .....	Allentown .....	39	62	50	302
Pennsylvania .....	Philadelphia .....	6	64	1000	332
Pennsylvania .....	Philadelphia .....	10	67	791.8	354
Puerto Rico .....	Aguada .....	50	62	50.1	343
Puerto Rico .....	Arecibo .....	60	61	55	242
Puerto Rico .....	Mayaguez .....	16	63	50.1	347
Puerto Rico .....	Naranjito .....	64	65	50.1	142
Puerto Rico .....	Ponce .....	7	66	407.4	826
Wisconsin .....	Milwaukee .....	18	61	519.8	307

NOTE: DTV stations on Channel 59 must be considered even though they are not indicated in the above table. The transition period is scheduled to end on December 31, 2006. After that time, unless otherwise directed by the Commission, 746–764 MHz and 776–794 MHz stations will no longer be required to protect reception of co-channel or adjacent channel TV/DTV stations.

(1) Licensees of stations operating within the ERP and HAAT limits of § 27.50 must select one of three methods to meet the TV/DTV protection requirements, subject to Commission approval:

(i) Utilize the geographic separation specified in the tables referenced below;

(ii) Submit an engineering study justifying the proposed separations based

on the actual parameters of the land mobile station and the actual parameters of the TV/DTV station(s) it is trying to protect; or,

(iii) Obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

(2) The following is the method for geographic separations.

(i) Base and fixed stations that operate in the 746–764 MHz and 777–792 MHz bands having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table B (co-channel frequencies based

on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. For base and fixed stations having an antenna height (HAAT) between 152–914 meters (500–3,000 ft.) the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure B in § 90.309 of this chapter. For heights of more than 152 m. (500 ft.) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station (*i.e.*, it exceeds the distance from the appropriate Table in § 90.309 of this chapter to the relevant TV/DTV station), an authorization will not be granted unless it can be shown in an engineering study (*see* paragraph (b)(1)(ii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour (64 dBµV/m for TV and 41 dBµV/m for DTV stations) or unless the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the actual Grade B contour (64 dBµV/m for TV and 41 dBµV/m coverage contour for DTV stations) will be achieved. Directions for calculating powers, heights, and reduction curves are listed in § 90.309 of this chapter for land mobile stations. Directions for calculating coverage contours are listed in §§ 73.683–685 of this chapter for TV stations and in § 73.625 of this chapter for DTV stations.

(ii) Control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 747–762 MHz and 777–792 MHz bands are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection for TV stations and 17 dB for DTV stations) in § 90.309 of this chapter and a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/

DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and –23 dB for DTV stations). Since control, fixed, and mobile stations may affect different TV/DTV stations than the associated base or fixed station, particular care must be taken by applicants/licensees to ensure that all appropriate TV/DTV stations are considered (*e.g.* a base station may be operating within TV Channel 62 and the mobiles within TV Channel 67, in which case TV Channels 61, 62, 63, 66, 67 and 68 must be protected). Control, fixed, and mobile stations shall keep a minimum distance of 96.5 kilometers (60 miles) from all adjacent channel TV/DTV stations. Since mobiles and portables are able to move and communicate with each other, licensees must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations.

(iii) In order to protect certain TV/DTV stations and to ensure protection from these stations which may have extremely large contours due to unusual height situations, an additional distance factor must be used by all base, fixed, control, and mobile stations. For all co-channel and adjacent channel TV/DTV stations which have an HAAT between 350 and 600 meters, licensees must add the following DISTANCE FACTOR to the value obtained from the referenced Tables in § 90.309 of this chapter and to the distance for control, fixed, and mobile stations on adjacent TV/DTV channels (96.5 km).

DISTANCE FACTOR = (TV/DTV HAAT – 350) + 14 in kilometers, where HAAT is the TV or DTV station antenna height above average terrain obtained from its authorized or proposed facilities, whichever is greater.

(iv) For all co-channel and adjacent channel TV/DTV stations which have an antenna height above average terrain greater than 600 meters, licensees must add 18 kilometers as the DISTANCE FACTOR to the value obtained from the referenced Tables in § 90.309 of this chapter and to the distance for control, fixed, and mobile stations on adjacent TV/DTV channels (96.5 km).

NOTE TO § 27.60: The 88.5 km (55 mi) Grade B service contour (64 dBµV/m) is based on a

hypothetical TV station operating at an effective radiated power of one megawatt, a transmitting antenna height above average terrain of 610 meters (2000 feet) and the Commission's R-6602 F(50,50) curves. *See* § 73.699 of this chapter. Maximum facilities for TV stations operating in the UHF band are 5 megawatts effective radiated power at an antenna HAAT of 610 meters (2,000 feet). *See* § 73.614 of this chapter. The equivalent contour for DTV stations is based on a 41 dBuV/m signal strength and the distance to the F(50,90) curve. *See* § 73.625 of this chapter.

[65 FR 3148, Jan. 20, 2000, as amended at 65 FR 17605, Apr. 4, 2000; 65 FR 42883, July 12, 2000]

§§ 27.61–27.62 [Reserved]

**§ 27.63 Disturbance of AM broadcast station antenna patterns.**

WCS licensees that construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for measures necessary to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the FCC for the AM station, if the disturbance occurred as a result of such construction or modification.

(a) *Non-directional AM stations.* If tower construction or modification is planned within 1 kilometer (0.6 mile) of a non-directional AM broadcast station tower, the WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The WCS licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.

(b) *Directional AM stations.* If tower construction or modification is planned within 3 kilometers (1.9 miles) of a directional AM broadcast station array, the WCS licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification would affect the AM station antenna pattern. The WCS licensee is responsible for the installation and con-

tinued maintenance of any detuning apparatus necessary to restore proper performance of the AM station array.

**§ 27.64 Protection from interference.**

Wireless Communications Service (WCS) stations operating in full accordance with applicable FCC rules and the terms and conditions of their authorizations are normally considered to be non-interfering. If the FCC determines, however, that interference which significantly interrupts or degrades a radio service is being caused, it may, after notice and an opportunity for a hearing, require modifications to any WCS station as necessary to eliminate such interference.

(a) *Failure to operate as authorized.* Any licensee causing interference to the service of other stations by failing to operate its station in full accordance with its authorization and applicable FCC rules shall discontinue all transmissions, except those necessary for the immediate safety of life or property, until it can bring its station into full compliance with the authorization and rules.

(b) *Intermodulation interference.* Licensees should attempt to resolve such interference by technical means.

(c) *Situations in which no protection is afforded.* Except as provided elsewhere in this part, no protection from interference is afforded in the following situations:

(1) *Interference to base receivers from base or fixed transmitters.* Licensees should attempt to resolve such interference by technical means or operating arrangements.

(2) *Interference to mobile receivers from mobile transmitters.* No protection is provided against mobile-to-mobile interference.

(3) *Interference to base receivers from mobile transmitters.* No protection is provided against mobile-to-base interference.

(4) *Interference to fixed stations.* Licensees should attempt to resolve such interference by technical means or operating arrangements.

(5) *Anomalous or infrequent propagation modes.* No protection is provided against interference caused by tropospheric and ionospheric propagation of signals.

## Federal Communications Commission

## § 27.203

### § 27.66 Discontinuance, reduction, or impairment of service.

(a) *Involuntary act.* If the service provided by a fixed common carrier licensee, or a fixed common carrier operating on spectrum licensed to a Guard Band Manager, is involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the licensee must promptly notify the Commission, in writing, as to the reasons for discontinuance, reduction, or impairment of service, including a statement when normal service is to be resumed. When normal service is resumed, the licensee must promptly notify the Commission.

(b) *Voluntary act by common carrier.* If a fixed common carrier licensee, or a fixed common carrier operating on spectrum licensed to a Guard Band Manager, voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must obtain prior authorization as provided under § 63.71 of this chapter. An application will be granted within 31 days after filing if no objections have been received.

(c) *Voluntary act by non-common carrier.* If a fixed non-common carrier licensee, or a fixed non-common carrier operating on spectrum licensed to a Guard Band Manager, voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must give written notice to the Commission within seven days.

(d) *Notifications and requests.* Notifications and requests identified in paragraphs (a) through (c) of this section should be sent to: Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania, 17325.

[65 FR 3149, Jan. 20, 2000; 65 FR 12483, Mar. 9, 2000, as amended at 65 FR 17605, Apr. 4, 2000; 65 FR 57267, Sept. 21, 2000]

### Subpart D—Competitive Bidding Procedures for the 2305–2320 MHz and 2345–2360 MHz Bands

#### § 27.201 WCS in the 2305–2320 MHz and 2345–2360 MHz bands subject to competitive bidding.

Mutually exclusive initial applications to provide WCS in the 2305–2320

MHz and 2345–2360 MHz bands service are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise specified in this part.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 57268, Sept. 21, 2000]

#### § 27.202 Competitive bidding mechanisms.

In addition to the provisions of § 1.2104(a) through (f), (h) and (i) of this chapter, the following provision will apply to WCS in the 2305–2320 and 2345–2360 bands: Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 57268, Sept. 21, 2000]

#### § 27.203 Withdrawal, default and disqualification payments.

When the Commission conducts a simultaneous multiple round auction pursuant to § 27.202, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified. When the amount of such a payment cannot be determined, a deposit of up to 20 percent of the amount bid on the license will be required.

(a) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(b) *Default or disqualification after close of auction.* See § 1.2104(g)(2) of this chapter.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 2349, Jan. 15, 1998]

**§ 27.204 Bidding application and certification procedures; prohibition of collusion.**

(a) *Submission of Short-Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit, by means of electronic filing, a short-form application (FCC Form 175). Unless otherwise provided by public notice, the Form 175 need not be accompanied by an upfront payment (see § 27.205).

(1) All Form 175s will be due on the date specified by public notice.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the names, citizenship and addresses of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to section 27.210(b), a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 27.210(b).

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure;

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid; and

(x) Certification under penalty of perjury that it is not in default on any Commission licenses and that it is not delinquent on any extension of credit from any federal agency.

NOTE TO PARAGRAPH (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Amendment of Application.* Applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make changes to the information required by § 27.204(a) (such as ownership changes or changes in the identification of parties to bidding consortia), provided such changes do not

result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for licenses in any of the same geographic license areas as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

(c) Prohibition of collusion. (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the filing of short-form applications, all applicants are prohibited from co-operating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 27.204(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for licenses in any of the same geographic license areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic license area, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic license area(s); and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(6) For purposes of this paragraph:

(i) The term "applicant" shall include the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 5 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity; and

(ii) The term "bids or bidding strategies" shall include capital calls or requests for additional funds in support of bids or bidding strategies.

#### **§ 27.205 Submission of upfront payments.**

(a) Each eligible bidder for WCS in the 2305-2320 and 2345-2360 bands licenses subject to auction shall pay an upfront payment pursuant to this chapter and procedures specified by public notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer.

(c) If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the

## § 27.206

required deposit of a winning bidder, the Commission will refund the excess amount after determining that no bid withdrawal payments are owed by that bidder.

(e) In accordance with the provisions of paragraph (d) of this section, in the event a payment is assessed pursuant to § 27.203 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the high bidder may have.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 57268, Sept. 21, 2000]

### **§ 27.206 Submission of down payment and filing of long-form applications.**

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the serv-

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ice in which the applicant is the high bidder. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Processing Section, 1919 M Street, NW, Room 222, Washington, DC 20554. An applicant that fails to submit the required long-form application as required under this section, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in section 27.203.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 27.204.

### **§ 27.207 [Reserved]**

### **§ 27.208 License grant, denial, default, and disqualification.**

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 27.203.

In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 27.206(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in § 27.203. In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

**§ 27.209 Designated entities; bidding credits; unjust enrichment.**

(a) Designated entities entitled to preferences in the WCS in the 2305-2320 and 2345-2360 bands auction are small businesses and very small businesses as defined in § 27.110(b). Designated entities will be eligible for bidding credits, as defined in paragraphs (b) and (c) of this section.

(b) A winning bidder that qualifies as a *small business* may use a bidding credit of 25 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a *very small business* may use a bidding credit of 35 percent to lower the cost of its winning bid.

(d) *Unjust enrichment.* See § 1.2111 of this chapter.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 2349, Jan. 15, 1998; 65 FR 57268, Sept. 21, 2000]

**§ 27.210 Definitions.**

(a) Scope. The definitions in this section apply to § 27.209, unless otherwise specified in those sections.

(b) Small Business; Very Small Business; Consortia.

(1) A *small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets the \$40 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section or the \$15 million average annual gross revenues size standard set forth in paragraph (b)(2) of this section, the gross revenues of the applicant and its affiliates shall be considered on a cumulative basis and aggregated subject to the following exceptions:

(i) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal net worth of an applicant and its affiliates is not included in the applicant's gross revenues; and

(ii) For purposes of paragraphs (b)(1) and (b)(2) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of paragraphs (b)(1) and (b)(2) of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of paragraphs (b)(1) and (b)(2) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.



(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(c) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate.*—(1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

- (i) Directly or indirectly controls or has the power to control the applicant;
- (ii) Is directly or indirectly controlled by the applicant;
- (iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant; or
- (iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it

is immaterial whether it is exercised so long as the power to control exists.

*Example for paragraph (d)(2)(i).* An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer, or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

*Example for paragraph (d)(2)(iii).* In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him/her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation

recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context “immediate family member” means father, mother, husband, wife, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half-brother or -sister. This presumption may be rebutted by showing that:

(A) The family members are estranged;

(B) The family ties are remote;

(C) The family members are not closely involved with each other in business matters.

*Example for paragraph (d)(3)(ii).* A owns a controlling interest in Corporation X. A’s sister-in-law, B, has a controlling interest in a WCS in the 2305–2320 and 2345–2360 bands geographic area license application. Because A and B have a presumptive kinship affiliation, A’s interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he/she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he/she owns, controls, or has the power to control less than 50 percent of the concern’s voting stock, if the block of stock he/she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebut-

ted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

*Example 1 for paragraph (d)(5).* If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in a WCS in the 2305–2320 and 2345–2360 bands geographic area license application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

*Example 2 for paragraph (d)(5).* If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds a controlling interest in a WCS in the 2305–2320 MHz and 2345–2360 MHz bands geographic area license application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule, which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

*Example 3 for paragraph (d)(5).* If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

## § 27.301

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the

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business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 57268, Sept. 21, 2000]

## Subpart E—Application, Licensing, and Processing Rules for WCS

### § 27.301 [Reserved]

### § 27.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including § 27.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien Ownership. A WCS authorization may not be granted to or held by an entity not meeting the requirements of section 310 of the Communications Act of 1934, as amended, 47 U.S.C. section 310 insofar as applicable to the particular service in question.

### §§ 27.303–27.307 [Reserved]

### § 27.308 Technical content of applications.

All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a WCS license must also comply with all technical requirements of the rules governing the applicable frequency band (see subparts C, D, F, and G of this part, as appropriate).

[65 FR 57268, Sept. 21, 2000]

**§§ 27.310–27.320 [Reserved]****§ 27.321 Mutually exclusive applications.**

(a) Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under the Commission's rules governing the Wireless Communications Services involved. The Commission uses the general procedures in this section for processing mutually exclusive applications in the Wireless Communications Services.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

**§§ 27.322–27.325 [Reserved]****Subpart F—Competitive Bidding Procedures for the 746–764 MHz and 776–794 MHz Bands**

SOURCE: 65 FR 3149, Jan. 20, 2000, unless otherwise noted.

**§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.**

(a) Mutually exclusive initial applications for licenses in the 746–764 MHz and 776–794 MHz bands are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

(b) For auctions of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, the payments imposed on bidders who default on payments due after an auction closes or who are disqualified, set forth in § 1.2104(g) of this chapter, shall be calculated as follows. The default payment consists of a deficiency portion and an additional payment. The additional payment shall be 25 percent of the subsequent winning bid or the defaulted bid, whichever is less. In the case that either the subsequent winning bid or the defaulted bid is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in

§ 1.2104(g)(2) of this chapter. The deficiency portion of the default payment shall be calculated as set forth in § 27.501(b)(1) through (b)(4). In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1) of this chapter. In calculating the additional payment portion of the default payment, to determine whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, the defaulted and subsequent bid(s) will be compared according to the rules set forth in paragraphs (b)(1) through (4) of this section for calculation of the deficiency portion of the default payment.

(1) Where a defaulting bidder won licenses individually (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, we will calculate the deficiency portion as we do in our simultaneous multiple round auctions, and on a license-by-license basis (*i.e.*, the differences between the amount originally bid and the amount subsequently bid will not be aggregated to determine a net amount owed). Where a license is sold individually and not as part of a package, we find no reason to modify the calculation of the deficiency portion of the default payment.

(2) Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either in the same package(s), or in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis, and the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus, in this situation, we will calculate the deficiency portion in a manner analogous to where the licenses are sold individually. However, because a bid on a package does not imply any specific allocation of the total amount to the individual licenses making up that package, where the licenses are subsequently sold individually or as part of smaller packages, we believe we should aggregate the amounts received in the subsequent

auction in order to determine any deficiency.

(3) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in § 27.501(b)(2)), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. As stated in § 27.501(b)(2), a bid on a package does not imply any specific allocation of the total amount to the licenses making up that package. We believe that in this situation we should aggregate the amounts bid on the various packages in order to calculate the deficiency portion owed.

(4) When in the situation described in § 27.501(b)(3), there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional amount portion) will be allocated to the defaulting bidders in proportion to the amount they originally bid. For example, if Bidder 1 defaults on Package ABC for \$200, and Bidder 2 defaults on Package DE for \$400, and in a subsequent auction the licenses are won in Package AB for \$150 and Package CDE for \$350, Bidder 1 would be liable for  $\frac{1}{3}$  of the default payment and Bidder 2 would be responsible for  $\frac{2}{3}$ . The total default payment would be equal to the difference between the total of the original bids (\$600) and the total of the subsequent amounts bid (\$500) plus an additional amount of 25 percent of the total of the subsequent amounts bid. The total default payment therefore would equal \$100 (\$600–\$500) plus 25 percent of \$500 (\$125), for a total default payment of \$225.

[65 FR 17065, Apr. 4, 2000, as amended at 66 FR 10377, Feb. 15, 2001; 66 FR 21287, Apr. 30, 2001]

**§ 27.502 Designated entities.**

(a) Eligibility for small business provisions. (1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraphs (a)(1) and (a)(2) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status as a small business or very small business under this section must disclose on its short-and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(4) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(5) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(6) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(7) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that

affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests. (i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the bene-

ficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or the prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter.

### Subpart G—Guard Band Managers

SOURCE: 65 FR 17605, Apr. 4, 2000, unless otherwise noted.

#### § 27.601 Guard Band Manager authority and coordination requirements.

(a) Subject to the provisions of § 27.2(b) and paragraphs (c) and (d) of this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is licensed, provided such stations comply with Commission Rules and coordination requirements.

(b) Subject to the provisions of § 27.2(b) and paragraphs (c) and (d) of this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to delete, move or change the operating parameters of any of the user's stations that are covered under the Guard Band Manager's license without prior Commission approval, provided such stations comply with Commission Rules and coordination requirements.

(c)(1) A Guard Band Manager must file a separate station application and obtain all appropriate Commission approvals or authorizations prior to construction of stations that—

(i) Require submission of an Environmental Assessment under § 1.1307 of this chapter;

(ii) Require international coordination; or

(iii) Would affect the radio frequency quiet zones described in § 90.177 of this chapter.

(2) Prior to construction of a station, a Guard Band Manager must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(3) It is the Guard Band Manager's responsibility to determine whether a referral to the Commission is needed for any individual station constructed in the Guard Band Manager's license area.

(d)(1) A Guard Band Manager must notify Commission-recognized public safety frequency coordinators for the 700 MHz public safety band and adjacent-area Guard Band Managers within one business day after the Guard Band Manager has:

(i) Coordinated a new station or modification of an existing station; or

(ii) Filed an application for an individual station license with the Commission.

(2) The notification required in paragraph (d)(1) of this section must include, at a minimum—

(i) The frequency or frequencies coordinated;

(ii) Antenna location and height;

(iii) Type of emission;

(iv) Effective radiated power;

(v) A description of the service area, date of coordination, and user name or, in the alternative, a description of the type of operation.

(3) In the event a Guard Band Manager partitions its service area or disaggregates its spectrum, it is required to submit the notification required in paragraph (d)(1) of this section to other Guard Band Managers in the same geographic area.

(4) Entities coordinated by a Guard Band Manager must wait at least 10 business days after the notification required in paragraph (d)(1) of this section before operating under the Guard Band Manager's license;

(5) If, in the event of harmful interference, the Guard Band Manager is unable to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

(e) Where a deletion, move or change authorized under paragraph (b) of this section constitutes a discontinuance, reduction, or impairment of service under § 27.66 or where discontinuance, reduction or impairment of service results from an involuntary act subject to § 27.66(a), the Guard Band Manager must comply with the notification and authorization requirements set forth in that section.

**§ 27.602 Guard Band Manager agreements.**

Guard Band Managers are required to enter into written agreements regarding the use of their licensed spectrum by others, subject to the following conditions:

(a) The duration of spectrum user agreements may not extend beyond the term of the Guard Band Manager's FCC license.

(b) The spectrum user agreement must specify in detail the operating parameters of the spectrum user's system, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters specified in Commission rules for the use of spectrum identified in § 27.5(b)(1) and (b)(2).

(c) The spectrum user agreement must require the spectrum user to use Commission-approved equipment where appropriate and to complete post-construction proofs of system performance prior to system activation.

(d) The spectrum user must agree to operate its system in compliance with all technical specifications for the system contained in the agreement and agree to cooperate fully with any investigation or inquiry conducted by either the Commission or the Guard Band Manager.

(e) The spectrum user must agree to comply with all applicable Commission rules, and the spectrum user must accept Commission oversight and enforcement.

(f) The spectrum user agreement must stipulate that if the Guard Band Manager determines that there is an ongoing violation of the Commission's rules or that the spectrum user's system is causing harmful interference, the Guard Band Manager shall have the

right to suspend or terminate operation of the spectrum user's system. The spectrum user agreement must stipulate that if the spectrum user refuses to comply with a suspension or termination order, the Guard Band Manager will be free to use all legal means necessary to enforce the order.

(g) The spectrum user agreement may not impose unduly restrictive requirements on use of the licensed frequencies, including any requirement that is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager.

(h) Guard Band Managers shall maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. Such records shall be kept current and be made available upon request for inspection by the Commission or its representatives.

**§ 27.603 Access to the Guard Band Manager's spectrum.**

(a) A Guard Band Manager may not engage in unjust or unreasonable discrimination among spectrum users and may not unreasonably deny prospective spectrum users access to the Guard Band Manager's licensed spectrum.

(b) A Guard Band Manager may not impose unduly restrictive requirements on use of its licensed frequencies, including any requirement that is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager.

(c) A Guard Band Manager may lease a reasonable amount of its spectrum to an affiliate for the affiliate's own internal use or for the affiliate's provision of commercial or private radio services. However, a Guard Band Manager must lease the predominant amount of its spectrum to non-affiliates.

**§ 27.604 Limitation on licenses won at auction.**

(a) For the first auction of licenses in Blocks A and B, as defined in § 27.5, no applicant may be deemed the winning bidder of both a Block A and a Block B license in a single geographic service area.



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(b) For purposes of paragraph (a) of this section, licenses will be deemed to be won by the same bidder if an entity that wins one license at the auction is an affiliate of any other entity that wins a license at the auction.

### § 27.605 Geographic partitioning and spectrum disaggregation.

An entity that acquires a portion of a Guard Band Manager's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a Guard Band Manager and is subject to the obligations and restrictions on Guard Band Manager licenses set forth in this subpart.

### § 27.606 Complaints against Guard Band Managers.

Guard Band Managers are expected to resolve disputes with their customers or disputes between multiple customers of the Guard Band Manager in the same manner that the parties would resolve other commercial disputes arising out of the spectrum user agreement. The Commission will also consider complaints filed against a Guard Band Manager for violating the Communications Act or the Commission's regulations or policies. When there is a dispute between a Guard Band Manager, or its spectrum user, and a non-contracting party, and the Guard Band Manager is unable or unwilling to resolve such dispute in a timely fashion, the non-contracting party may file a complaint with the Commission pursuant to § 1.41 of this chapter.

### § 27.607 Performance requirements and annual reporting requirement.

(a) Guard Band Managers are subject to the performance requirements specified in § 27.14(a).

(b) Guard Band Managers are required to file an annual report providing the Commission with information about the manner in which their spectrum is being utilized. Such reports shall be filed with the Commission on a calendar year basis, no later than the March 1 following the close of each calendar year, unless another filing date is specified by Public Notice.

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(c) Guard Band Managers must, at a minimum, include the following information in their annual reports:

(1) The total number of spectrum users and the number of those users that are affiliates of the Guard Band Manager;

(2) The amount of the Guard Band Manager's spectrum being used by the Guard Band Manager's affiliates in any part of the licensed service area;

(3) The amount of Guard Band Manager's spectrum being used pursuant to agreements with unaffiliated third parties;

(4) The nature of the spectrum use of the Guard Band Manager's customers; and

(5) The length of the term of each spectrum user agreement.

(d) The specific information that Guard Band Managers will provide and the procedures that they will follow in submitting their annual reports will be announced in a Public Notice issued by the Wireless Telecommunications Bureau.

## PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

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